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ments is not, however, sufficient. The principles which determined their distribution must be sought. The principle most applicable in determining whether an end is administrative is that it is so where the public interest in the summary disposition of rather technical or extremely complex matters overrides the individual and social interests in the judicial protection of private rights.[23] As administrative machinery becomes more efficient, the force of the objection to its determination of such rights is weakened. But at no time is a final solution of the problem possible. Changes in judicial and political philosophy, influencing the weight given to these various interests, must constantly modify the conception of what are, properly, administrative ends.[24]

A DISTINCTION IN THE *RENVOI* DOCTRINE. — Broadly stated, the doctrine of the *renvoi* is that, when by its rules of the conflict of laws a court must apply the law of some other legal unit, it must apply not only the internal law of that unit, but also its rules of the conflict of laws. This might result in the application of the internal law either of the forum or of a third country. Take the Englishman domiciled in France who dies intestate leaving movables in England and Italy. By English law distribution is according to the law of the domicile, but if the *renvoi* doctrine is accepted, that law would include the French conflict-of-laws rule that English law, as the national law, should govern. And if Italy accepted the *renvoi* doctrine it would be directed from English law to French law.[1] What is the proper rule? Juristic speculation has been almost infinite.[2]

The discussion has hitherto been largely confined to cases like that

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Compare, for example, the case of Plymouth Coal Co., *v.* Pennsylvania, 232 U. S. 531 (1913), with the cases of Wong Wing *v.* United States, 163 U. S. 228 (1895), and *Ex parte* Milligan, 4 Wall. (U. S.) 2 (1866).

[23] See Field, J., in Hagar *v.* Reclamation District No. 108, 111 U. S. 701 (1883). *Cf.* Cary *v.* Curtis, 3 How. (U. S.) 236 (1845); Central of Georgia Ry. Co. *v.* Wright, 207 U. S. 127 (1907).

The recent case of City of Indianapolis *v.* State, in note 15, *supra*, also furnishes an excellent example of this kind. There the statute provided that, in a contest over paying assessments, upon petition of the property owners the court should appoint a board of appraisers. The decision of this board was to be final, and its determination was to be "entered as a judgment upon the records of the court." The statute was upheld. The court recognized that taxation has been generally held to be a purely administrative end, and the determination of the value of property merely an incident thereto.

[24] See Pound, "Executive Justice," 55 AM. L. REG. 137; Pound, "The Revival of Personal Government," PROC. N. H. BAR ASSN. (1917) 13; Goodnow, "The Growth of Executive Discretion," 2 PROC. AM. POL. SCI. ASSN., 29; Powell, "Judicial Review of Administrative Action in Immigration Proceedings," 22 HARV. L. REV. 360.

[1] Since this is really a sending *on*, it is called in German, *Weiterverweisung*, as distinguished from the former case of sending *back*, called *Rückverweisung*.

[2] For a list of all the writings, see Ernest G. Lorenzen, "The *Renvoi* Doctrine in the Conflict of Laws," 27 YALE L. J. 509, 531 *et seq.* To those in English may now be added, Ernest O. Schreiber, Jr., "The Doctrine of the *Renvoi* in Anglo-American Law," 31 HARV. L. REV. 523.

given above, where succession to movables within the jurisdiction of the forum is in question. In such cases the arguments against acceptance of the doctrine seem persuasive, especially under the American theory of territorial law. Nothing but New York law can be law in New York.[3] When the New York lawgiver orders succession to New York movables according to the law of France, the French lawgiver is not to be allowed to say that some other law should govern.[4] Moreover, if the reference from the forum to the foreign law includes the conflict-of-laws rule of that law, the next reference includes it just as well and so on *ad infinitum* in what has appropriately been described as "international lawn tennis." [5] For purposes of decision the break must come somewhere, and the only logical place is at the first reference.

At the same time there is a feeling that certain exceptional cases exist where acceptance of the *renvoi* doctrine would be desirable.[6] It is submitted that "the explanation of" these suggested exceptions (generally dealing with marriages and titles to land) involves a fundamental distinction, hitherto apparently overlooked. This distinction is between a case where the law of the forum creates a new right, and one where it merely enforces a right created elsewhere. In the former case, as shown above, it is for the law of the forum, and it alone, to designate the internal law applicable. But the latter is vastly different. "If an American court, having according to the territorial theory to apply its own law to existing rights, finds that a right has, by its law, arisen under another law, it has only to learn the terms of that law and the nature of the right which it created." [7] The statement furnishes its own support. If the law of the forum provides that a right created by a foreign law be enforced, a just adjudication can be made only by deciding as to that right as the foreign court would have decided.[8] This means that all the law which that court would apply must be applied. All the cases in America and England involving the *renvoi* under such circumstances have reached this result.[9]

A recent New York case [10] adds to the authorities tacitly supporting this principle. The facts, slightly simplified, were as follows: A man

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[3] See STORY, CONFLICT OF LAWS, 6 ed., § 18; BEALE, CONFLICT OF LAWS, §§ 73, 74.

[4] *In re* Tallmadge, 109 Misc. 696, 181 N. Y. Supp. 336 (Surr., 1919).

[5] Buzzati, in 18 ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL, 146; cited, Schreiber, *op. cit.*, at 528.

[6] Lorenzen, *op. cit.*, at 529. See also 31 YALE L. J. 191, 193.

[7] See BEALE, CONFLICT OF LAWS, 77.

[8] It has been suggested that this way of looking at the matter begs the question. "The argument that the foreign law having jurisdiction under the *lex fori*, has created rights which must be recognized involves in effect a *petitio principii*. The very question is whether the *lex fori* should recognize alleged rights created not by the territorial law of the foreign country referred to, but by that of another state which is incompetent under the *lex fori*." See Ernest G. Lorenzen, "The *Renvoi* Theory and the Application of Foreign Law," 10 COL. L. REV. 190, 205, n. 49. It is sufficient answer that the *lex fori* does not consider the right as created by this third law to which reference is made. If it did, it would itself have turned directly to it.

[9] Armitage *v.* Att'y Gen'l, [1906] P. 135; Guernsey *v.* Imperial Bank of Canada, 188 Fed. 300 (8th Circ., 1911); White *v.* Holly, 80 Conn. 438, 68 Atl. 997 (1908); *In re* Baines (1903) cited in DICEY, CONFLICT OF LAWS, 2 ed., 723.

[10] Ball *v.* Cross, 132 N. E. 106 (N. Y.). For the facts of this case see RECENT CASES, *infra*, p. 468.

and his wife were domiciled in A. He left her and secured a divorce upon constructive service in B. The wife married a New York citizen, who later brought suit against her to annul this marriage. The court held that the decision should depend upon the effect which A would give to such a divorce,[11] although New York would not recognize a divorce so obtained against one of its citizens.[12] The right here sought to be enforced is the status of the second marriage. This right depended upon the law of A. It is obvious that the court could not decide properly as to the right created in another jurisdiction without taking into consideration all the law which would there be applied. In addition, this view of the question has the important practical benefit that the woman considered divorced at her domicil will not be considered elsewhere as married, and *vice versa*.

TITLE TO PERSONALTY BY ESTOPPEL. — A purports to sell a chattel to B. It is well settled that — unless exceptional circumstances make the transaction the equivalent of a quitclaim — A's conduct impliedly involves an assertion that he has title to the chattel.[1] The assertion or warranty has two aspects: (1) a representation of fact; and (2) an assumption of liability in case the representation is not true.[2] Suppose that at that time A is not the owner of the chattel but later acquires title thereto. It seems quite clear that as between himself and B he cannot be heard to say that the after-acquired title did not promptly inure to B's benefit.[3] *A fortiori* he is thus estopped if the assertion of title is express. So far it is practically immaterial whether by virtue of the estoppel "title passes" from A to B or not. The same results are predicated in either case. But if innocent third parties have claims to the chattel as against A, then it is at once important to know whether legal title passed to B in such wise as to protect B against these claims.

If the subject matter of the sale be land and the representation or warranty be expressed in the deed, the weight of judicial opinion — subject to some dissent because of an inconsistency of the rule with the

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[11] It should be noted that the principal case does not raise the question of a court applying some internal law other than that of the country to whose law its conflict-of-laws rule directed it, but does raise the question of the *renvoi* doctrine as broadly stated, assuming that the rule as to recognition of a divorce rendered at the domicil of only one party is a rule of the conflict of laws.

[12] People *v.* Baker, 76 N. Y. 78 (1879); Olmsted *v.* Olmsted, 190 N. Y. 458, 83 N. E. 569 (1908).

[1] See WILLISTON, SALES, §§ 218–220.

[2] These different aspects are illustrated in the rule allowing an action for breach of warranty to be either in tort as upon a false representation or in contract as upon the undertaking of responsibility. See Farrell *v.* Manhattan Market, 198 Mass. 271, 274, 84 N. E. 481, 485 (1908).

[3] See WILLISTON, SALES, § 131. *Accord:* as to sale of a trade secret, Vulcan Co. *v.* The Amer. Can Co., 67 N. J. Eq. 243, 58 Atl. 290 (1904). Perhaps the most accurate statement is that A is estopped to deny that he had title at the time of the original sale. As A does not hold any title under B he can assert none against him, for such an assertion would rest upon facts inconsistent with those which he is bound to admit as true.